

ASSESSORS' HANDBOOK
SECTION 221

TAX SITUS OF PROPERTY

MARCH 1985

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Reprint Note

This manual has been renumbered from AH 021 with the same title.

This manual has been reprinted with a new format and minor corrections for spelling and math errors. The text of the manual has not changed from the prior edition. It has **not** been edited for law, court cases, or other sources since the original publication date.

FOREWORD

The determination of the tax situs of property—the place where it is legally situated for property tax purposes—is one of the essential factors of a valid assessment. Ordinarily, a property has situs and is taxable in the taxing district in which it is physically located. However, there are exceptions, and the purpose of this handbook is to provide the ground rules in order that standardized assessment practices may be utilized in the exceptional cases as well as in ordinary circumstances.

This handbook was first published in 1950. An excellent treatise on the same subject was developed by the Los Angeles County Assessor's Office and republished, with minor revisions by the Standards Committee of the California Assessors' Association, in 1970. That treatise was reorganized and published as AH 021 in 1972.

This current version is updated to contain recent statutory changes and court decisions and their effect on the tax situs of property. Notable cases are: *Ice Capades, Inc. v. County of Los Angeles* (1976) 56 Cal. App. 3d 745, and *GeoMetrics v. County of Santa Clara* (1982) 127 Cal. App. 3d 940.

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CHAPTER 1: INTRODUCTION

The determination of the tax situs of property is one of the essential factors of a valid assessment, since property ordinarily is taxable only within the taxing district in which it is located. Section 14, article XIII of the California Constitution is explicit on this point. It states:

All property taxed by local government shall be assessed in the county, city, and district in which it is situated.

Since the tax situs of real property is rarely a problem, this manual focuses on the situs of movable property.

EARLY DOCTRINE AND RECENT THEORY

The determination of the tax situs of movables property is frequently a complicated problem. Until the 19th century, gold, jewels, and other articles of movable property were assessed and taxed under the rule of *mobilia sequuntur personam*—"movables follow the person." But this doctrine lost much of its support as the types and uses of personal property increased dramatically and much of it came into the ownership of corporations rather than natural persons. Taxation at the physical location of movable property came into vogue, and the *mobilia sequuntur* doctrine was reserved mainly for intangibles and tangibles which were in such continuous motion that their "actual location" was scarcely ascertainable for purposes of an annually levied tax. The new doctrine of physical situs derives its justification from the facts that (1) property obtains protection and other benefits from the governmental units within whose jurisdiction it is located, and (2) its owner therefore has an obligation to defray some part of these governmental costs.¹

If, however, property was located in two or more jurisdictions for any substantial period of time during the tax year, it became necessary to determine its situs by more detailed rules in order to prevent multiple taxation or escapes. What, for example, is the tax situs of property that has been in a county for less than 6 of the 12 months immediately preceding the lien date, but which is committed to use in the county of an indeterminate period, or of aircraft regularly flying between airports located in different counties or states?

DOCTRINE OF "TAX SITUS"

To meet the difficulties just described, the courts have developed a doctrine of "tax situs." The term "tax situs" thereby acquired a dual meaning: it may mean the actual physical location of property, or it may mean a location other than that of the property at any given time, where, for reasons of equity, the property is deemed to be located for purposes of taxation.

¹ *Temescal Water Co. v. Niemann* (1913) 22 Cal. App. 174, and *Michelin Tire Corp. v. Wages* (1976) 423 U.S. 276, 46 L. Ed. 2d 495, 96 S. Ct. 535.

As will be seen, the courts have dealt with many complex problems involving tax situs. The type of property, the use to which the property is normally put, and even the owner of the property may affect the situs for purposes of taxation. In *Ice Capades, Inc. v. County of Los Angeles* (1976) 56 Cal. 3d 745, the court referred to these complexities by stating, at page 753:

The issue is essentially one of fact to be determined by principles distilled from an overabundance of authority.

An understanding of the current doctrine of tax situs, therefore, requires a review of the legal principles and their underlying concepts as they have been developed and utilized by the courts.

CHAPTER 2: LEGAL ASPECTS OF SITUS

GENERAL RULE OF SITUS

Property is taxable by each governmental unit that has the right to levy and collect a property tax if the tax situs of the property is within the unit's boundaries. This is true whether the property is owned by residents or by nonresidents of the taxing state.² Conversely, property that has its tax situs outside the jurisdiction of this state cannot be assessed and taxed here even though the owner may reside here. Property to be taxed in California must have its tax situs in this state.³

There are several statutory provisions⁴ relating to the situs of particular types of property, and section 443 of the Revenue and Taxation Code requires a property owner to show on a property statement "the county where the property is taxable" and "any city or revenue district where it is situated." Although there is no provision in the California State Constitution or in the statutes prescribing the situs of property generally, section 14, article XIII of the California Constitution does state that all property shall be assessed where situated. This Constitutional provision is the basis of all local taxation.⁵

The general rule is that land has a location and is taxable there.⁶ This situs is independent of the owner's domicile.⁷ California law does not distinguish between levying a tax on property and taxing the succession to property.⁸ For example, the location of property for taxation purposes does not change on the death of the owner.⁹

COMMON LAW OF PERSONAL PROPERTY SITUS

Under the common law, the legal situs of personal property follows the person.¹⁰ In other words, the legal situs is at the residence or domicile of the owner.¹¹ This rule was expressed in the Latin maxim *mobilia sequuntur personam*—movables follow the person. Thus, the general common-law rule is that personal property owned by one domiciled in this state, in contemplation of law, has its situs and is taxable here¹² though it may be actually located elsewhere.¹³ If the property is

² American Jurisprudence, "Taxation," section 441.

³ *City and County of San Francisco v. Talbot* (1883) 63 Cal. 485.

⁴ See Appendix B.

⁵ *San Francisco and San Mateo Electric Railway Co. v. Scott* (1904) 142 Cal. 222.

⁶ *Stockton Gas and Electric Co. v. San Joaquin County* (1905) 148 Cal. 313.

⁷ *People v. Niles* (1868) 35 Cal. 282.

⁸ *Westinghouse Electric and Manufacturing Co. v. County of Los Angeles* (1922) 188 Cal. 491.

⁹ *City and County of San Francisco v. Lux* (1884) 64 Cal. 481.

¹⁰ *Chambers v. Mumford* (1921) 187 Cal. 228.

¹¹ *MacKay v. City and County of San Francisco* (1900) 128 Cal. 678.

¹² *People v. Park* (1863) 23 Cal. 138.

¹³ *Hodges, Estate of* (1915) 170 Cal. 492.

located elsewhere, jurisdiction to tax in California is obtained on the ground that the property is "constructively" within the state of the owner's domicile.¹⁴

The doctrine of *mobilia sequuntur personam* is not a conclusive guide to situs for tax purposes¹⁵ since it is merely a general rule, and the rule has its exceptions.¹⁶ The jurisdiction of the owner's domicile must yield to the jurisdiction of the state where the property is, in fact, situated if the two differ.¹⁷ The rule is one which a state by its tax laws may modify or reverse;¹⁸ as is shown by court decisions, it does not have invariable application and may for purposes of taxation be disregarded.¹⁹ Therefore, the question of situs of personal property for taxation is in the first instance one of fact, to be resolved on consideration of all the circumstances bearing on the matter.²⁰

PERMANENCY AND SITUS

It is now established that the situs of tangible personal property for tax purposes is in the locality where it has an established permanent situs, which may be other than the owner's domicile.²¹ This concept is embraced by section 404 of the Revenue and Taxation Code, which requires that all taxable property be assessed by the assessor of the taxing agency where the property is situated. The word "situated" connotes a more or less permanent location or situs, and a degree of permanency must attach before tangible personal property that has been removed from the domicile of the owner attains a situs elsewhere.²²

There is no requirement that one keep property in a jurisdiction where it will be subject to property taxes, and it may be removed to a nontaxing jurisdiction and avoid the imposition of taxes if the removal is permanent. But if the removal is intended to be temporary only, for tax reduction purposes or otherwise, the property remains taxable at its permanent situs.²³

TRANSIENT PROPERTY

The California constitutional requirement (section 1, article XIII) that all property be taxed in proportion to its full value does not require that all property temporarily in this state be taxed. Property is taxable only when it has situs here. At all times there is property of great value which is being transported across this state, from one foreign state to another, and which no one would

¹⁴ *Hinckley v. County of San Diego* (1920) 49 Cal. App. 668.

¹⁵ *Brock and Co. v. Board of Supervisors* (1937) 8 Cal. 2d 286.

¹⁶ *Lowry v. County of Los Angeles* (1918) 38 Cal. App. 158.

¹⁷ *Lowry v. County of Los Angeles*, supra.

¹⁸ *McDougald v. Lilienthal* (1917) 174 Cal. 698.

¹⁹ *Lowry v. County of Los Angeles*, supra.

²⁰ *Sayles v. County of Los Angeles* (1943) 59 Cal. App. 2d 295.

²¹ *Church v. City of Los Angeles* (1950) 96 Cal. App. 2d 89.

²² *Brock and Co. v. Board of Supervisors* (1937) 8 Cal. 2d 286.

²³ *Brock and Co. v. Board of Supervisors*, supra.

claim should be taxed here.²⁴ The taxation of personal property in the state must be based on the fact that it is to some extent kept or maintained here rather than here casually or in transit.²⁵ Likewise, the statute requiring all taxable property to be assessed by an official of the taxing agency where the property is situated does not refer to the temporary location of property, but to its permanent situs.²⁶

PERSONAL PROPERTY OF MEMBERS OF THE ARMED FORCES

The Soldiers' and Sailors' Civil Relief Act provides that the tax situs of personal property of service personnel on active duty is in the state of legal residence regardless of its physical location (1 Ops. Cal. Atty. Gen. 382, April 23, 1943; Opinion No. NS4847).

The effect of the act is to create a situs for tax purposes which is other than that where the property is actually located. However, the act extends only to **nonbusiness personal property**; personal property used in a trade or business is not subject to the provisions of this act. Also, the member's personal property is subject to taxation where located unless a statement is filed with the assessor declaring the legal residence to be in another state.

²⁴ *City and County of San Francisco v. Talbot* (1883) 63 Cal. 485.

²⁵ *People v. Niles* (1868) 35 Cal. 282.

²⁶ *Rosaco v. County of Tuolumne* (1940) 143 Cal. 430.

CHAPTER 3: SITUS OF REAL PROPERTY

The situs of real property, including taxable possessory interests, is the location of the real property.

Where a parcel of real property lies in more than one revenue district, the portion lying within each particular district is taxable in that district.

Riparian and overlying (correlative) water rights have situs identical to the situs of the land. Appropriative water rights have situs at the point of diversion of the water.²⁷ The situs of prescriptive water rights may be at either the point of diversion of the water or the location of the land where the water is received, depending on the particular circumstances. For a more complete discussion of water rights, see Assessors' Handbook Section 545, *Valuation of Water Rights*.

²⁷ *North Kern Water Storage District v. County of Kern* (1960) 179 Cal. App. 2d 268.

CHAPTER 4: SITUS OF TANGIBLE PERSONAL PROPERTY

As stated in Chapter 2, Permanency and Situs, of this handbook, tangible personal property is normally taxable at the location where it has established permanent situs. However, transitory personal property presents special problems and requires special consideration.

PROPERTY IN TRANSIT FROM ONE SITUS TO ANOTHER

This subchapter deals with property which on the lien date is being moved to a new permanent location.

INTRASTATE COMMERCE

Property being transported by an owner from one location within the state to another location within the state has its situs at the point of origin of the shipment regardless of the mode of transportation or the ownership of the means of conveyance.²⁸

Property being transported to a buyer has its situs at the point of destination unless the buyer demonstrates to the satisfaction of the assessor that the seller had title until delivery, in which case it has situs at the point of origin. The Uniform Commercial Code provides that the free on board (f.o.b.) designation, unless otherwise agreed between a seller and buyer, constitutes terms of delivery. Title to property remains with a seller until he has completed delivery by making the property available for disposition by the buyer at the f.o.b. point. Retention of a security interest by a seller must be disregarded for purposes of determining situs.²⁹

The interruption of transportation for purposes incidental to transportation does not remove property from its in-transit status. The interruption of transportation for the business purpose or profit of the owner terminates the transportation and may create a situs for taxation at the place where the property is situated on the lien date.³⁰

INTERSTATE AND FOREIGN COMMERCE

Goods (merchandise) moving in interstate or foreign commerce are exempt from state taxation while in actual transit. Property destined for interstate or foreign commerce is taxable until transit has actually commenced. It is also taxable once transit has terminated.

Commencement of Transit

Transit commences when property has either started moving on its interstate or foreign journey or has been committed to a common carrier for that purpose. However, property deposited at the

²⁸ California Administrative Code, Title 18, section 203.

²⁹ Ibid.

³⁰ California Administrative Code, Title 18, section 203.

point of shipment in interstate commerce but not committed to a carrier is still subject to taxation.³¹

Termination of Transit

Property brought into the state is taxable as soon as the actual transit ends. This occurs when the property reaches the hands of the consignee or owner at the destination point.³²

Property being held or stored in railroad cars for the convenience of the owner are not in interstate transit even though they remain in the cars in which they are shipped.³³ Likewise, property is not in interstate transit if the holding by the carrier is not incidental to its transportation. Transit has ended as soon as the carrier becomes entitled to make storage, demurrage, or other charges for keeping the property or when the carrier acts as a warehouse by operation of law.³⁴

It is a common practice for railroads to notify a consignee or an owner that the property is available for unloading, and then allow the consignee or owner several hours to unload the property before beginning demurrage charges. For property tax purposes, transit terminates when the consignee or owner is notified by the railroad that the property is available for unloading rather than at the end of the several-hour grace period.

Interruption of Transit

After property has begun its interstate or foreign transit, it remains exempt from taxation even though a temporary suspension of its movement is required in order to facilitate its transportation, to prevent its destruction, or to change the method of carriage.³⁵

Property may be subject to taxation when the interruption in transit is for purposes unconnected with its transportation.³⁶ In the course of its opinion the court said:

Where property has come to rest within a state, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the state, or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property within the state and is thus subject to its taxing power.

The court made the additional observation that the original shipment was not suspended; it was ended.

³¹ *Coe v. Errol* (1886) 116 U.S. 517.

³² *Brown v. Houston* (1895) 114 U.S. 622; *Pittsburg and Southern Coal Co. v. Bates* (1895) 156 U.S. 577.

³³ *Texas Co. v. Brown* (1922) 258 U.S. 466.

³⁴ *Columbia Motors v. Ada* (1926) 247 Pac. 786; *State v. Creeden* (1889) 43 N.W. 673; *Yellow Cab Manufacturing Co. v. City of San Diego* (1930) 106 Cal. App. 587.

³⁵ *Champlain Realty Co. v. Town of Brattleboro* (1926) 260 U.S. 366.

³⁶ *Minnesota v. Blasius* (1933) 290 U.S. 1.

At this point, it should be reiterated that this subchapter deals with property which is changing situs. Different rules apply to property which, although moved from time to time, retains the same tax situs.

LEASED OR RENTED PROPERTY

Property Tax Rule 204 deals with the tax situs of property that is leased or rented.

Property leased or rented on a daily, weekly or other short-term basis has situs at the place where the lessor normally keeps the property. Temporary absences from that location do not change the situs of the property.

The situs of property leased or rented for an extended, but unspecified, period or leased for a term of more than six months shall be determined on the basis of the lessee's use.³⁷

The intent of the lessor and the lessee as demonstrated by objective facts is a determining factor in ascertaining the situs of leased or rented property.

Property leased to a contractor for a period of one month would have situs at the lessor's location even though the property may be removed to another county or state. This would be true even if the property became subject to the other state's taxation during its one-month stay.³⁸ However, where the contractor has leased the equipment for an unspecified period which, from evidence available, appeared as though it would extend beyond six months, the equipment would be taxable at its own location on the lien date.

MOVABLE PROPERTY

This subchapter deals with property which, by intention and/or normal usage, is frequently moved from time to time, such as transportation equipment, circuses, and construction equipment. Property Tax Rule 205 defines movable property as:

Movable property is all property which is intended to be, and is, moved from time to time from one location to another.³⁹

If movable property is leased on the lien date, its situs is to be determined by the objective facts and the guidelines contained in this handbook and in the California Administrative Code, Title 18, sections 203 and 204.

³⁷ California Administrative Code, Title 18, section 204.

³⁸ It may be necessary to apportion the tax. See the discussion of the *Ice Capades* case in the next subchapter.

³⁹ California Administrative Code, Title 18, section 205.

The situs of movable property which is not leased on the lien date should be determined on the basis of the duration of its stay in the county. However, see Chapter 5 for a discussion of specific properties that may vary from the following general guidelines.

MOVABLE PROPERTY IN TRANSIT

The fact that movable property may be in interstate or foreign transit on the lien date has no bearing on the taxable situs of the property. Congress has the power to regulate interstate and foreign commerce⁴⁰ but has never adopted any federal statute which affects taxable situs. As will be seen later in this chapter, there are situations involving international commerce which affects taxability of property.

OVER SIX MONTHS

Movable property has situs where located on the lien date if it has been in the county for more than 6 of the 12 months immediately preceding the lien date and if the objective facts indicate it will remain in or return to the county for any substantial period during the 12 months immediately succeeding the lien date.⁴¹

LESS THAN SIX MONTHS

Movable property which has been in the county for less than 6 of the 12 months immediately preceding the lien date, but which is committed to use in the county for an indeterminate period or for more than 6 months, has situs there regardless of whether the use extends through or commences with the lien date.⁴²

SITUS OTHER THAN AT LOCATION

Movable property which, according to the above sections, would not have situs where it is located on the lien date has situs at the location where it is normally returned between uses or, if there is no such location, at the principal place of business of the owner.⁴³

APPORTIONMENT BETWEEN STATES

Except for certificated aircraft, scheduled air taxis, and intercounty ferryboats (see Chapter 5), property which has taxable situs in California is assessable at only one location, even though the property may have substantial presence at more than one location. Thus, if a property is in County "A" for seven months and County "B" for five months, County "A" will assess the entire property and County "B" may not assess the property at all.

This rule of situs is not entirely applicable where substantial presence in more than one state is involved. The current state of law is expressed in four relatively recent court decisions (1974

⁴⁰ United States Constitution, article I, section 8, clause 3 ("commerce clause").

⁴¹ California Administrative Code, Title 18, section 205.

⁴² Ibid.

⁴³ California Administrative Code, Title 18, section 205.

through 1982), which are discussed below. First, however, a brief discussion of federal law versus a state's power to tax is appropriate.

Federal Law Versus State Law

The "commerce clause" (article I, section 8, clause 3) of the United States Constitution grants to Congress the power to regulate interstate and foreign commerce. The "import-export clause" (article I, section 10, clause 2) prohibits states from levying taxes on imports or exports without the consent of Congress. The President of the United States has the power, with the advice and consent of the Senate, to make treaties with foreign nations (article II, section 2, clause 2).

Although the federal government does regulate many matters of interstate commerce, Congress has studiously avoided legislation involving the states' power to levy property taxes. Exceptions are the 4-R Act (section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976) prohibiting discriminatory taxation of railroads, and federal law which affects the tax situs of personal property of members of the armed forces. Federal statutes do not limit ad valorem taxation by the states, and with the exception of railroads, 28 U.S.C. section 1341 prohibits federal courts from taking jurisdiction in tax assessment cases unless it can be proved that a plain, speedy, and efficient remedy does not exist under state law.

There have been many state and federal court cases that deal with apportionment of taxes on instruments of interstate commerce.⁴⁴ For purposes of this discussion, it suffices to state that the courts do not prohibit taxation of property which has presence in more than one state, and where allocation is required, neither the courts nor the Congress have ever specified any particular method of allocation or taxation. The 4-R Act prohibits discriminatory taxation against railroads, and several courts have commented that a slight overlapping of taxes (which occurs accidentally because different states have different rules of situs) is permissible so long as a state's tax system provides for fair apportionment, does not discriminate against interstate commerce, and is fairly related to the services provided by the state.

Although situs is not regulated by any federal treaty with a foreign nation, in some cases property which would appear to have taxable situs in California is fully or partially exempt because of treaties and/or the power of a foreign nation to tax the property. These situations are discussed later in this chapter.

Situs of Movable Property in More than One State

This section concerns movable properties which are not instruments of commerce.

In the previous edition of this manual (August 1972), it was stated (on page 16) that property which has tax situs in California is subject to tax here even though the property is temporarily located in another state and may be subject to the other state's taxation during its stay. As a result

⁴⁴ See Assessors' Handbook Section 570, *Commercial Aircraft Value Allocation*, for discussion of several cases involving allocation of instruments of interstate commerce.

of *Ice Capades, Inc. v. County of Los Angeles*, (1976) 56 Cal. App. 3d 745, it is now necessary to apportion taxes to the extent that a property acquires taxable situs in another state.

The *Ice Capades* case involved costumes, stage props, and other equipment which were annually purchased, constructed, and assembled in California (Los Angeles), which was the domicile of the owner. The property was then moved to a permanent training facility in New Jersey. Permanent, year-round quarters were maintained in New Jersey for this training program. After a stay of two to four months in New Jersey, the property moved, during the next several months, from city to city (approximately one week per city), ending in California. The property was then refurbished and sent to Minnesota for 30 to 60 days for training and practice, then moved from city to city (including cities in California other than Los Angeles) until, at the end of the second year, it was returned to the owner's domicile in California or scrapped.

Los Angeles County assessed an unapportioned tax on the property. The taxpayer contended that the tax violated the commerce and due process clauses of the United States Constitution, and that the Los Angeles assessment should be apportioned to remove values attributable to other California counties.

The court held:

- The state of domicile (California) retains jurisdiction to tax personal property that has not acquired tax situs elsewhere.
- A taxpayer who contends that some portion of the property is not taxable by the state of domicile has the burden of proving that taxable situs has been established elsewhere.
- In order to establish tax situs outside the domicile state, both the length of time and the intent of the presence are significant.
 - The annual, substantial presence in New Jersey established tax situs there, and the California measure must be apportioned to exclude the portion attributable to New Jersey.

Comment: A fair reading of this decision is that to the extent the property has situs elsewhere, California has no power to tax regardless of whether the other state actually taxed the property.

- The annual presence in Minnesota was borderline. The court made it clear that the annual 30 to 60 day presence could be sufficient to establish situs, but in this particular case the taxpayer did not provide sufficient evidence to overturn the trial court's finding that taxable situs was not established.

Comment: In a borderline situation, it would be reasonable to apportion the tax if the other jurisdiction actually levied a tax.

- The transitory contact with the cities did not establish taxable situs even though in some cases the visits were annual. The intent was that the property would stay for short, predetermined times, then move on. At page 754, the court stated:

On virtually identical facts, a circus was held not to have acquired a tax situs in a jurisdiction in which it was presenting its performance on the tax lien date. (*Robinson v. Longley* (1883) 18 Nev. 71.)

- The court distinguished between the transitory contact with various cities and the "habitual presence" finding in *Sea-Land, Inc. v. County of Alameda*, 12 Cal. 3d 772, where a portion of the aggregate was typically present at a particular location.

Comment: Although the court did not discuss the issue, it is clear from numerous state laws and court decisions that different criteria for establishing tax situs apply in situations involving instruments of commerce.

- The court distinguished between rules of apportionment where more than one state is involved and where more than one location within a state is involved. Property which has tax situs within a state is taxable according to state law.

Comment: To the extent the property has situs in California, Property Tax Rule 205 allocates the entire assessment to one location.

Although the *Ice Capades* case did not set down a precise formula for determining when a movable property acquires situs in more than one state, it made it clear that multiple tax situs is possible between states and, where multiple tax situs exists, the tax must be apportioned.

In borderline situations, the existence (or lack thereof) of a property tax assessment by another state is relevant evidence, although not necessarily conclusive. If another state did tax the personal property, the taxing agency should be contacted to determine the basis and type of the tax, and to verify that the tax was not canceled. Any apportionment should be made only on the basis of time that the property had tax situs in the other state or states. The dollar amount of the other state's tax bill is irrelevant, since different states have different effective tax rates.

If the owner is not domiciled in California or the property is not permanently (or indefinitely) based in California, the *Ice Capades* rule nevertheless applies. A property that is here on only a transitory basis is not taxable here. A property that has a sufficient quantum of contact to establish the situs here but is domiciled or based in another state is taxable here only for the portion of the year the property is present in California.

Situs of Movable Property in California and in Foreign Nations

GeoMetrics v. County of Santa Clara (1982) 127 Cal. App. 3d 940 involved aircraft domiciled in Santa Clara County but physically present in foreign nations for all or substantial parts of several years.⁴⁵

The court held that since there was no known custom which would preclude taxation by the foreign nations during the time the aircraft were present, the tax must be apportioned. The fact that the aircraft were not actually taxed by any foreign nation was irrelevant.

Based on this case, if a California property has a substantial presence in another nation, the California assessment should be apportioned to eliminate that time. However, the taxpayer should be required to prove that such substantial presence exists. Transitory contact, such as may occur when a vessel or aircraft makes a round-the-world voyage, does not establish substantial presence, so the tax situs of the property would remain in California.

HABITUAL PRESENCE

In some cases, particular items of property do not remain in one location long enough to establish tax situs under the *Ice Capades* rule, but the property, or like-kind property owned by the same taxpayer, is present so frequently that tax situs is established. Instruments of commerce (commercial aircraft, railroad cars, barges, etc.), linen supplies, and returnable containers are common examples of property which attains a tax situs because there is a substantial average or habitual presence at a location.

Special rules have evolved for assessing most types of instruments of commerce. Where specific statutes or rules do not exist, the courts have traditionally supported any reasonable method of apportionment. In *Sea-land Services, Inc. v. County of Alameda* (1974) 12 Cal. 3d 772, the court ruled that an assessment of cargo containers based on an "average presence" was proper. In another case involving cargo containers, *Japan Line, Ltd. v. County of Los Angeles* (1979) 441 U.S. 434, the United States Supreme Court approved the concept of a property tax assessment based on average presence. In this case, however, the assessment was voided by the court because a state may not tax foreign-owned instrumentalities of international commerce.⁴⁶

The habitual presence rule is applicable to domestically owned property operating in California and other out-of-state locations and which is not assessable under specific statutory formulas. However, it is not applicable for assessments within California. As stated earlier, under Property Tax Rule 205, property is assessable at only one location in California.

⁴⁵ These aircraft were not "instruments of commerce." They were involved in airborne geophysical surveys.

⁴⁶ All ocean-going cargo containers of 1,000 cubic feet or more are now exempt under section 232, of the Revenue and Taxation Code. However, this exemption does not affect the principle of tax situs due to habitual or average presence.

CHAPTER 5: SPECIAL TYPES OF PROPERTY

AIRCRAFT

CERTIFICATED AIRCRAFT AND SCHEDULED AIR TAXIS

Foreign owned, based, and registered aircraft serving California airports exclusively in foreign commerce are immune from local ad valorem taxation under the "home port" doctrine.⁴⁷

Domestically owned aircraft using airports within this state while engaged in interstate or foreign commerce are taxable for a portion of the value of the aircraft. Conversely, this state is precluded from taxing the total aircraft where the aircraft is physically outside this state for a period of time.⁴⁸

The apportionment of the value of transportation property (instruments of commerce) is justified by the fact that the taxing jurisdiction extends opportunities, benefits, and protection to the property engaged in interstate or foreign commerce during the pro rata time the property is within their respective jurisdictions.

To establish tax situs within a California county, the certificated aircraft or scheduled air taxis must make intentional physical contact involving actual embarking or disembarking of crew, passengers, or freight. Emergency contact does not, in and of itself, establish situs any more than does flying over the state without landing.⁴⁹ See Assessors' Handbook Section 570, *Commercial Aircraft Value Allocation*, for a more comprehensive discussion of the situs of certificated aircraft and scheduled air taxes.

AIRCRAFT REPAIR AND REPLACEMENT PARTS

Aircraft parts provide an excellent example of personal property that has situs where it is habitually located. Property Tax Rule 201 states:

Aircraft components, repair and replacement parts, and supplies owned, claimed, possessed, controlled, or managed by air carrier shall be assessed at the place where they are situated on the lien date. Items which have been moved temporarily to another location for processing or repair, such as radio equipment being serviced or an engine being overhauled, do not acquire another situs for taxation by reason of temporary removal from the place where they are habitually kept.

⁴⁷ *Scandinavian Airlines System, Inc. v. County of Los Angeles* (1961) 56 Cal. 2d 11.

⁴⁸ *Flying Tiger Line, Inc. v. County Los Angeles* (1958) 51 Cal. 2d 314.

⁴⁹ California Administrative Code, Title 18, section 202.

Components, parts, and supplies do not acquire more than one taxable situs, although individual items may be rotated between storage and operational use on various aircraft over a period of time.

The use of the habitual storage location to determine situs eliminates many difficult problems that would be encountered if it were necessary to ascertain the actual location of the components at any given time.

However, the Board's legal staff has expressed the opinion that aircraft components, i.e., engines, may acquire situs at other than the place where habitually kept. For example, suppose an air carrier keeps eight engines rotating between storage, repair, and installation on the aircraft. Where four engines are normally found at the place of storage and four are normally at another location for repair, then the number normally located at each location should be assessed there.

GENERAL AIRCRAFT AND NONSCHEDULED AIR TAXIS

The situs of general aircraft and nonscheduled air taxis, as distinguished from certificated air carriers and scheduled air taxis,⁵⁰ is the location where the aircraft is habitually kept or to which it returns when not in service. This is another example of situs of personal property at a place other than the domicile of its owner. The reasoning is that an aircraft is located at a specific airport which may or may not be in the same jurisdiction as the owner's residence.

Out-of-state aircraft which are found in California on the lien date while undergoing repairs are exempt from property taxation pursuant to section 220 of the Revenue and Taxation Code, which states:

Any aircraft which is in California on the lien date solely for the purpose of being repaired, overhauled, modified, or serviced is exempt from personal property taxation. This exemption does not apply to aircraft normally based in California, or operated intrastate or interstate in and into California.

When an aircraft has two or more airports between which it divides its time when not in use, situs becomes a question of fact to be determined by a quantitative time test. Property Tax Rule 205(b) states:

Aircraft other than those subject to Revenue and Taxation Code sections 1150 to 1155 have situs for taxation purposes at the airport in which they are habitually situated when not in flight. An aircraft that spends a substantial amount of ground time at each of two or more airports has its tax situs at the airport where it spends the greatest amount of ground time.

Rule 205(b) has application to aircraft at two or more airports within California.

⁵⁰ See section 1154 of the Revenue and Taxation Code for the distinction between "scheduled" and "nonscheduled" air taxis.

If the aircraft establishes tax situs both in California and outside California, the rules established in *Ice Capades, Inc. v. County of Los Angeles* (1976) 56 Cal. App. 3d 745 and *GeoMetrics v. County of Santa Clara* 127 Cal. App. 3d 940 should be followed. If the aircraft is a California aircraft, the assessment should be apportioned by deducting all time that the aircraft actually established tax situs outside California. If the aircraft is not a California aircraft but is physically present for a sufficient time to establish tax situs here, it should be assessed for the time it is in California.

CONTAINERS

RETURNABLE CONTAINERS⁵¹

Compressed gas cylinders, beer barrels, and steel drums are types of containers that are typically delivered to locations where the contents are consumed and are then returned to the owners for refilling and returning to the same or other locations. A deposit may be required, but there is no intent to sell the containers.

The situs of such containers is the location to which they are returned for reprocessing or refilling; i.e., the owner's business location.

Soft drink beverage containers of a kind customarily returned for reuse are taxable only to the persons in possession on the lien date (see section 996 of the Revenue and Taxation Code). Accordingly, such bottles in the possession of the bottler will have situs where returned for refilling. Such bottles in the hands of retailers and consumers of the contents have situs where located on the lien date.

Where returnable containers originate from out-of-state and are returned to the out-of-state location for refilling, the "average presence" rule set forth in *Sea-Land Service, Inc. v. County of Alameda* (1974) 12 Cal. 3d 772 should be applied in determining tax situs.

SEMI-PERMANENT CONTAINERS

There are various containers which are more or less permanently located at a particular site. Examples are butane or propane tanks located at residences and used as fuel sources. These tanks are refilled at the respective locations and remain there for considerable periods. Situs for tax purposes is the place where they are located on the lien date.

⁵¹ It should be noted that containers held for sale or lease are exempt from property taxation under the business inventory exemption. See section 129 of the Revenue and Taxation Code and Property Tax Rule 133.

LINEN SUPPLY

SHORT-TERM RENTALS

Towels and other laundered items are normally supplied to business sites for a monthly rental fee with the understanding that the items will be replaced periodically with a fresh supply. The soiled linen is taken back to the owner's business location for cleaning then redistributed, sometimes to the same business site, but more often not. The linens should be assessed at the location where they are returned for cleaning.

Under the apportionment procedures set forth in *Sea-Land Services, Inc. v. County of Alameda* and *Ice Capades, Inc. v. County of Los Angeles*, the supply of linens of a company servicing two different states may be apportioned between the states based upon the number typically within each state.

LONG-TERM RENTALS

Laundries sometimes lease readily identifiable industrial garments to service stations and other business enterprises for the life of the garments. These garments are returned temporarily to the laundry from time to time for normal maintenance and are then returned to the same user where they are used until worn out.

Since these items are rented for the life of the garments, are retained in the possession of the **same** user for the major portion of their lives, and are only returned temporarily to the laundry, it is our view that these items attain a situs at the service station or other business location where they are used.

LINEN SUPPLY HARDWARE

The towel cabinets, soap dispensers, and soiled rag containers are supplied to the linen supply customers and remain at the customers' locations for the duration of the contract. As these items are located at the various customers' businesses for extended periods, they will have their tax situs where located on the lien date.

RACEHORSES

Section 5720.6 of the Revenue and Taxation Code states the tax situs of racehorses subject to in-lieu taxation is the home ranch of the owner or other place where the racehorses are quartered or domiciled and to which they normally return when not racing or in training at a race track. If the racehorses are not quartered at a home ranch or other location when not racing or in training to race, the situs is the residence of the owner. This determination is made at 12:01 a.m., January 1 each year.

ROLLING STOCK

The assessment of railway rolling stock is exclusively the function of the Valuation Division of the State Board of Equalization and is therefore not an appropriate subject for this handbook.

COIN-OPERATED MACHINES

Coin-operated machines, such as pinball machines, food and drink vending machines, music machines, and the like, are typically placed at various locations for extended periods of time and are only returned to the owner's business location for repair or for storage prior to disposal.

As these machines are more or less permanently situated at various locations, they have situs where located on the lien date.

VESSELS

Peculiarities of use of vessels, at least where engaged in foreign or interstate commerce, have resulted in the adoption of some specific situs regulations. An ocean-going vessel cannot be said to have an actual permanent situs, since it goes wherever called in the business in which it is engaged and is in port in any jurisdiction only incidentally.⁵² Vessels owned by nonresidents registered elsewhere and merely touching at a port in this state for the sole purpose of taking on and discharging cargo cannot be taxed here.⁵³ Vessels documented outside of this state but plying in whole or in part in its waters, however, are taxable in this state if the owners reside here.⁵⁴ When the owners reside in this state and the vessels are documented here, the vessels are taxable here though they have been engaged in foreign commerce and may never have stopped at California ports.⁵⁵

"HOME PORT" DOCTRINE

A vessel ordinarily has what is called its "home port," a port to which it belongs and which constitutes its legal abiding place of residence, regardless of actual absence therefrom.

This "home port" is not necessarily a port at which it is registered, but rather the port at or nearest to that in which the owner resides. If there is more than one owner and each owner resides in a different state, the state in which the ship's acting or managing owner resides is the situs for taxation.⁵⁶

⁵² *Olson v. City and County of San Francisco* (1905) 148 Cal. 80.

⁵³ *Hays v. The Pacific Mail Steamship Co.* (1854) 17 How. 596; *City and County of San Francisco v. Talbot* (1883) 63 Cal. 485.

⁵⁴ Revenue and Taxation Code, section 1138.

⁵⁵ *California Shipping Co. v. City and County of San Francisco* (1907) 150 Cal. 145.

⁵⁶ *Olson v. City and County of San Francisco* (1905) 148 Cal. 80.

An owner has no power to give his vessel a taxable situs by the arbitrary selection of a "home port" that is neither his domicile nor the vessel's actual situs.⁵⁷ However, a vessel may acquire an actual situs therein by being indefinitely and exclusively employed within the waters of a single state.⁵⁸

INACTIVE VESSELS

When vessels are decommissioned by the Navy and sold to a resident of another state but thereafter remain inoperative in a harbor in this state and are not registered or documented, they are not treated as vessels for tax situs purposes, but are instead regarded as ordinary personal property, permanently or indefinitely located in a particular port, and taxable there by the local authorities.⁵⁹

INTERCOUNTY FERRYBOATS

The tax situs of intercounty ferryboats is regulated by statute. When a ferry connects ports in more than one county, it is assessed in equal proportions in each of the counties.⁶⁰ The wharves, storehouses, and stationary property ancillary to the ferryboat operation are assessed in the county or counties where they are located.

INTERCOUNTY VESSELS OTHER THAN FERRYBOATS

County Where Habitually Moored

Where the owner or the master of a taxable vessel operating in California waters gives written notice of its habitual place of mooring when not in service to the assessor of the county where the vessel is documented, the vessel is assessed only in the county where habitually moored.⁶¹

County Where Documented

Vessels that are regularly engaged in transporting passengers or cargo between two or more ports, and vessels for which notice of habitual place of mooring has not been given, are assessed only in the county where documented.⁶² However, when barges, each of more than 50 tons burden and registered in San Francisco, were assessed by the Los Angeles County Assessor on the basis that each barge had been operating in Los Angeles County for five to ten years and therefore had acquired actual situs there, it was held that sections 1139 and 1140 of the Revenue and Taxation Code were in conflict with section 14, article XIII of the California Constitution

⁵⁷ *Sayles v. County of Los Angeles* (1943) 59 Cal. App. 2d 295.

⁵⁸ *Olson v. City and County of San Francisco*, supra; *Old Dominion Steamship Co. v. Virginia* (1905) 198 U.S. 299.

⁵⁹ *Ships and Power Equipment Corp. v. County of San Diego* (1949) 93 Cal. App. 2d 522.

⁶⁰ Revenue and Taxation Code, section 1137.

⁶¹ Revenue and Taxation Code, section 1139.

⁶² Revenue and Taxation Code, section 1140.

providing for taxation of property ". . . in the county. . . in which it is situated," and the assessment by the Los Angeles County was upheld.⁶³

NONDOCUMENTED VESSELS

Section 1141 of the Revenue and Taxation Code provides that vessels not required to be documented, primarily the larger pleasure craft, shall be assessed where they are habitually moored when not in use. However, for boats transported by trailers, the domicile of the owner is the usual tax situs. Proof that the boat is habitually stored or moored elsewhere when not in actual use overrules the presumption that it is taxable at the owner's domicile.

For additional discussion on the situs of boats, see Assessors' Handbook Section 576, *Vessel Assessment Procedure*, Chapter VI.

⁶³ *Smith-Rice Heavy Lifts, Inc. v. County of Los Angeles* (1967) 256 Cal. App. 2d 190.

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